

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  U S WEST COMMUNICATIONS, INC., n/k/a QWEST CORPORATION	DOCKET NOS. INU-00-2 WRU-00-83-272
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**ORDER GRANTING BLANKET CONFIDENTIALITY REQUEST AND WAIVER**

(Issued December 12, 2000)

**PROCEDURAL BACKGROUND**

On January 28, 1997, the Utilities Board (Board) issued an order initiating an investigation relating to the possible future entry of U S WEST Communications, Inc., n/k/a Qwest Corporation (Qwest), into the interLATA market. The proceeding was preliminarily identified as Docket No. 47 U.S.C. § 271(d)(2)(B). On June 24, 1997, the Board issued an order setting the procedure it intended to follow when Qwest made its filing with the Board. The Board directed Qwest to file its proposed application with the Board 90 days prior to making its application to the Federal Communications Commission (FCC) for entry into the intraLATA market in Iowa.

Qwest filed what was identified as a § 271 application with the Board on January 31, 2000. No testimony, affidavits, or other supporting documentation accompanied the filing. The Board issued an order on February 10, 2000, opening an investigation to review the application and identified the filing as Docket No. INU-00-2. In addition to its application, Qwest requested a schedule be set that

would allow the Board to consider all aspects of the docket contemporaneous with the Regional Oversight Committee (ROC) operational support systems (OSS) test and a modification of the Board's June 24, 1997, order which required prefiled testimony and an adversarial hearing.

The Board sought and received comment from other participants concerning the request by Qwest that the Board conduct a series of workshops addressing each aspect of § 271 instead of the procedure previously set out, which included the filing of testimony, a hearing for the purpose of cross-examination, and post-hearing briefs.

The response from the participants was overwhelming that workshops on specific checklist items could be very helpful. However, most responses indicated that the workshops should take place after a presentation of evidence by Qwest and an evidentiary hearing of some kind.

In a filing dated May 4, 2000, Qwest encouraged the Board to consider a multi-state process for purposes of its review of competition issues, various aspects of each item on the 14-point competitive checklist, § 272 (separate subsidiary) issues, and public interest considerations. The multi-state proposal filed by Qwest set out suggested workshop topics and indicated that, as proposed, it would include "the filing of testimony, the questioning of witnesses under oath, a discovery process, and an exhaustive exploration of issues."

As part of the procedures in this docket, Qwest filed direct testimony, affidavits, and exhibits on July 31, 2000. The testimony and exhibits were filed by

Qwest to demonstrate that it had satisfied a number of requirements of the Telecommunications Act of 1996 and the related Federal Communications Commission regulations.

**REQUEST FOR BLANKET CONFIDENTIALITY ORDER  
AND WAIVER BLANKET**

On September 1, 2000, Qwest filed a motion requesting the Board issue an order that would grant confidential treatment to certain specific information and to information claimed to be confidential by all parties filed throughout the remainder of this proceeding. In support of its motion, Qwest states that the Board should anticipate that all parties will be providing a significant amount of confidential information to other parties, and under Board rules, each time such information is filed a request for confidential treatment and an affidavit of a corporate officer would also be necessary. This information, Qwest asserts, would be either trade secrets and subject to confidential treatment pursuant to Iowa Code § 22.7(3), or a report to a government agency which, if released, would give advantage to competitors and serve no public purpose, pursuant to Iowa Code § 22.7(6).

Qwest asserts that the blanket confidentiality order would provide for an efficient procedure for the filing and sharing of confidential information and that no party would be harmed by the procedure. The alternative would be for each party to seek individual orders for each set of confidential material and thus burden the Board as well as all parties.

As part of its motion, Qwest also sought confidential treatment for certain specific information. Specifically, Qwest requested confidential treatment for MCC 01-007 and MCC 01-009, which contains market sensitive material and customer specific information, respectively.

Iowa Code § 22.7(6) provides confidential treatment for public records which are reports to government agencies and which, if released, would give advantage to competitors and would serve no public purpose. Iowa Code § 22.7(3) provides confidential treatment for trade secrets as recognized and protected by law. The Board finds that the information sought to be granted blanket confidential treatment is either company specific market information or company specific customer information, which is either trade secrets or are provided to the Board as a report to a government agency, the release of which would provide advantage to competitors. Additionally, the Board finds that the telecommunications industry is highly competitive and the release of the information would provide no tangible public benefit.

To grant the motion for a blanket grant of confidential treatment, the Board must find that there is clear and convincing evidence that the provisions of 199 IAC 1.9(6) should be waived for this proceeding. Board rule 199 IAC 1.3 establishes the standards for waivers. The Board finds that the facts supporting the motion meet the standards set out in 199 IAC 1.3 for waiving 199 IAC 1.9(6) and granting a blanket order of confidential treatment for all such information filed by

Qwest. The Board does not agree that Qwest's request should cover all materials that are filed by other participants. If another participant wishes to request a similar blanket grant of confidential treatment, with the appropriate statements describing the legal basis for withholding the materials from inspection and the facts to support the legal basis relied upon, along with the affidavit of a corporate officer, the Board will consider the request.

The Board has found that the information claimed to be confidential in this proceeding meets the statutory requirements for confidential treatment. The complexity of the proceeding supports the grant of the waiver to Qwest. This proceeding now involves the collaboration of seven states and many participants. The procedural schedule for this proceeding provides for several workshops and for a comprehensive exchange of information among the parties through the discovery process and the filing of testimony. The amount of information that is exchanged is voluminous and requiring Qwest to file for separate confidential treatment each time information is provided would be counterproductive and a waste of resources. The Board finds that no party will be prejudiced by the grant of this waiver and there is no statutory mandate for strictly applying the rule in this docket.

The Board in granting the blanket order for confidential treatment is specifically waiving the provisions of 199 IAC 1.9(6) that require the filing of a request and an affidavit with each separate piece of information as it is filed. The Board finds that the provisions of the rule that require the confidential information to be physically

separated and each page to be clearly marked as confidential are still applicable.

The Board expects Qwest to only designate as confidential that information, which meets the statutory standards under Iowa Code §§ 22.7(3) and 22.7(6), and that all such information be clearly marked.

The Board in granting a blanket order of confidential treatment is not waiving the provisions of 199 IAC 1.9(8)"b"(3) that set out the procedures for requesting the release of the confidential information which are trade secrets or reports to a government agency. Any party may request the release of information designated as confidential pursuant to the blanket order and the Board will allow the party claiming confidentiality to seek a court order to prevent the disclosure.

### **ORDERING CLAUSES**

#### **IT IS THEREFORE ORDERED:**

1. The request for confidential treatment filed by U S WEST Communications, Inc., n/k/a Qwest Corporation, on September 1, 2000, for MCC 01-007 and MCC 01-009 is granted pursuant to the provisions of Iowa Code §§ 22.7(3) and 22.7(6).

2. The provisions of 199 IAC 1.9(6) requiring the filing of a separate attached request for confidential treatment and the affidavit of a corporate officer with the confidential information for each such filing are waived for this proceeding for Qwest.

3. The information filed pursuant to the waiver granted in this order shall be held confidential by the Board subject to the provisions of 199 IAC 1.9(8)"b"(3).

4. All information filed or exchanged by Qwest in this proceeding that satisfies the requirements of Iowa Code §§ 22.7(3) and 22.7(6) and that has been physically separated and clearly marked as confidential is subject to the blanket grant of confidential treatment and the waiver granted in this order.

**UTILITIES BOARD**

/s/ Allan T. Thoms

/s/ Susan J. Frye

ATTEST:

/s/ Raymond K. Vawter, Jr.  
Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 12<sup>th</sup> day of December, 2000.